

**STATE OF MICHIGAN  
IN THE SUPREME COURT**  
Appeal from the Court of Appeals  
(Young, Jr., P.J., and Markman and Smolenski, JJ.)

In the Matter Of The Complaint Of MCI  
Telecommunications Corporation Against  
Ameritech Michigan And GTE North  
Incorporated Relative To Their Not Making  
IntraLATA Equal Access Available To MCI In  
The State Of Michigan

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AMERITECH MICHIGAN,  
Appellee,

v

MICHIGAN PUBLIC SERVICE COMMISSION,  
MCI TELECOMMUNICATIONS CORPORATION,  
a Delaware corporation, and AT&T  
COMMUNICATIONS OF MICHIGAN, INC.,  
and ATTORNEY GENERAL,

Appellants.

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MCI TELECOMMUNICATIONS CORPORATION,  
a Delaware corporation, and AT&T  
COMMUNICATIONS OF MICHIGAN, INC.

Plaintiffs,

and

MICHIGAN PUBLIC SERVICE COMMISSION,

Intervening Plaintiff-Appellant,

and

ATTORNEY GENERAL,

Appellant,

v

AMERITECH MICHIGAN,

Defendant-Appellee.

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Supreme Court Docket Nos.:  
112363 (MPSC)  
112367 (MCI/AT&T)  
112368 (Attorney General)

Court of Appeals No. 198706

MPSC Case No. U-10138

Supreme Court Docket Nos.:  
112364 (MPSC)  
112369 (Attorney General)

Court of Appeals No. 199383

Ingham County Circuit Court  
Case No. 96-84800-AW

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**MOTION TO HOLD CASE IN ABEYANCE AND FOR OTHER RELIEF**

NOW COMES Appellee, Ameritech Michigan, by and through its counsel, and for its Motion states:

1. Ameritech Michigan brings this Motion to apprise this Court of a recent decision by the United States Supreme Court which may moot or otherwise change in significant fashion the jurisprudential significance of and issues in this matter.

2. In 1996, Congress enacted the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.56 (codified as amended in scattered sections of Title 47, United States Code).

3. In accordance with the directives of the federal Telecommunications Act, the Federal Communications Commission (hereafter, "FCC") promulgated various rules. See, First Report and Order, Implementation of the Local Competition Provisions in the Communications Act of 1996, CC Docket No. 96-98 (August 8, 1996) [First Report and Order], and Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996) [Second Report and Order].

4. Numerous challenges to these FCC rules were brought by a multitude of entities (including state utility commissions, interexchange carriers, and local exchange carriers) throughout the country. These challenges were consolidated for hearing in the United States Court of Appeals for the Eighth Circuit. See, AT&T v Iowa Utilities Board, 120 F3d 753 (8<sup>th</sup> Cir, 1997); California v FCC, 124 F3d 934 (8<sup>th</sup> Cir, 1997). The participants in that consolidated proceeding included Ameritech Corporation, AT&T Corporation, and MCI Telecommunications Corporation.

5. One of the issues extant in the consolidated cases was a jurisdictional challenge to the FCC's toll dialing parity rules, which were codified at 47 CFR §§ 51.205-51.215, and in particular the authority of the FCC to issue intrastate, intraLATA toll dialing parity rules.

6. In response to the various challenges, and as here pertinent, the Eighth Circuit held:

Consequently, we conclude that the FCC exceeded its jurisdiction in promulgating its dialing parity rules, 47 C.F.R. §§ 51-205-51.215 (inclusive), but we set aside such rules only to the extent that they pertain to intraLATA telecommunications traffic.

California, et al v FCC, 124 F3d 934, 943 (8<sup>th</sup> Cir, 1997) (footnote omitted; emphasis supplied).

See also, Iowa Utilities Bd v FCC, 120 F3d 753 (8<sup>th</sup> Cir, 1997) (Eighth Circuit's invalidation of various other rules).

7. The United States Supreme Court granted petitions for review of the decisions of the Eighth Circuit. 521 US \_\_ (1998).

8. On Monday, January 25, 1999, the United States Supreme Court reversed in part and affirmed in part the decisions of the Eighth Circuit. AT&T Corp v Iowa Utilities Board, 1999 WL 24568; 1999 US LEXIS 903 (1999). More specifically, the Supreme Court concluded that the FCC had authority to issue rules regarding intraLATA toll dialing parity and reversed, inter alia, that portion of the Eighth Circuit's decision which vacated the FCC's dialing parity rules.

9. As a result of the decision in AT&T Corp., the FCC has jurisdiction over intraLATA dialing parity. The effect of the U.S. Supreme Court's decision likely moots or preempts any authority the Michigan Commission may have to order dialing parity, which authority lies at the heart of the current controversy in the case before this Court. The implementation of toll dialing parity must proceed in accordance with federal law -- i.e. FCC directives, not MPSC orders.

10. Pursuant to the Supreme Court's reversal of the Eighth Circuit's invalidation of the FCC dialing parity rules, Rule 213, 47 CFR § 51.213, governs implementation of toll dialing parity. That rule requires, among other things, Ameritech Michigan to file an implementation plan, provides for procedures following the filing of an implementation plan, and directs that intraLATA toll dialing parity cannot be implemented within a state until the implementation plan has been approved by the state commission or the FCC.

11. After issuance of an opinion by the United States Supreme Court, a petition for rehearing may be filed within 25 days. Sup. Ct. R. 45. If a timely petition is filed, a certified copy of the judgment would not be sent to the lower court until the disposition by the Supreme Court of the petition for rehearing. There are numerous parties to the AT&T Corp case, and it is unknown whether any party will petition for rehearing.

12. The outcome of AT&T Corp will have a material impact on the issues pending before this Court, and, at the very least, will have an impact on the jurisprudential significance of the matter.

WHEREFORE, Appellee, Ameritech Michigan, respectfully requests that this Honorable Court:

- A. Hold this matter in abeyance pending final appellate resolution of AT&T Corp v Iowa Utilities Board by the United States Supreme Court;
- B. After final appellate resolution by the United States Supreme Court, direct the parties to file supplemental briefs addressing the significance of that case on the instant case; and,
- C. Thereafter determine the manner in which this appeal should proceed.

Respectfully submitted,  
Attorneys for Appellee Ameritech Michigan

By: \_\_\_\_\_

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Telephone: (313) 223-8008

Dated: February 2 1999

LANSTING 21060-0 233983

kw  
(from 6/10/99)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY****NASHVILLE, TENNESSEE**

February 5, 1999

<b>IN RE:</b>	)	
	)	
<b>PETITION OF BELL SOUTH</b>	)	
<b>TELECOMMUNICATIONS, INC. FOR</b>	)	<b>DOCKET NO. 97-01399</b>
<b>APPROVAL OF AN INTRALATA TOLL</b>	)	
<b>DIALING PARITY IMPLEMENTATION PLAN</b>	)	

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**REPORT AND RECOMMENDATION OF PRE-HEARING OFFICER ON  
PRE-HEARING CONFERENCE HELD ON FEBRUARY 5, 1999**

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At a regularly scheduled Authority Conference held on January 19, 1999, the Directors of the Tennessee Regulatory Authority ("Authority") set a Hearing in this matter for February 10 and 11, 1999. On January 25, 1999, the Authority issued a Notice of Hearing which also set a Pre-Hearing Conference for February 5, 1999. This Pre-Hearing Conference was set for the purposes of narrowing the issues for hearing, facilitating the parties' request for assistance in developing a joint stipulation and considering any procedural matters prior to the Hearing. After the United States Supreme Court issued its decision in *AT&T Corp. et al. v. Iowa Utilities Board et al.*, on Monday, January 25, 1999, the Authority sent a revised Notice to the parties on January 28, 1999, re-setting the date for hearing in this case as February 8, 1999. Also, on January 28, 1999, the Pre-Hearing Officer issued a Report and Recommendation, in light of the United States Supreme Court's decision, recommending that the Authority proceed immediately to hold a hearing on the remaining unresolved issues in order that the BellSouth toll dialing parity plan be implemented on February 8, 1999, or as

soon as possible thereafter. The Pre-Hearing Officer recommended that the hearing in this case be moved up two (2) days from February 10 to February 8, 1999, and also recommended that the Pre-Hearing Conference scheduled for February 5, 1999, proceed as scheduled for the purpose of resolving through joint stipulation as many of the remaining issues as possible prior to the hearing.

On January 27, 1999, AT&T Communications of the South Central States, Inc. ("AT&T") filed an Emergency Motion to Reconsider the Authority's decision on Issue A concerning the date of implementation of the intraLATA toll dialing parity plan of BellSouth Telecommunications, Inc. ("BellSouth"). The Authority considered AT&T's Emergency Motion at a regularly scheduled Authority Conference held on February 2, 1999. At that Conference, counsel for AT&T and BellSouth announced that they had come to an agreement as to the terms and conditions of BellSouth's intraLATA toll dialing parity plan. The Directors requested that the parties submit the proposed agreement to the Authority by the close of business on February 3, 1999. Further, the Directors discussed the fact that the proposed agreement could be reviewed at the Pre-Hearing Conference to be held on February 5, 1999, and that, based on the progress made at the Pre-Hearing Conference, the Pre-Hearing Officer could submit a recommendation to the Authority on the proposed agreement which would be considered by the Directors on February 8, 1999. The necessity of a hearing would be determined by the action taken concerning the proposed agreement on February 8, 1999. On February 3, 1999, AT&T and BellSouth filed their proposed agreement with the Authority and served copies on all parties. A copy of the proposed agreement is attached to this Report and Recommendation as Exhibit A.

**The Pre-Hearing Conference**

The Pre-Hearing Conference was held on February 5, 1999, for the purpose of reviewing and discussing the proposed agreement with the parties. The following appearances were entered:

**BellSouth Telecommunications, Inc. ("BellSouth") - Guy Hicks, Esquire, and Kip Edenfield, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201;**

**AT&T Communications of the South Central States, Inc. ("AT&T") - James P. Lamoureux, Esquire, 1200 Peachtree St., NE, Atlanta, GA 30309;**

**MCI/WorldCom - Jon E. Hastings, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;**

**Sprint Communications - Carolyn Tatum Roddy, Esquire, 3100 Cumberland Circle, N0802, Atlanta, GA 30339;**

**NEXTLINK TN, L.L.C. - Henry Walker, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;**

**Time Warner Communications of the Mid South, L.P. - Charles B. Welch, Jr., Esquire, Farris, Mathews, Gilman, Branam & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;**

**Consumer Advocate Division, Office of the Attorney General - Vance L. Broemel, Esquire, and Archie Hickerson, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;**

Although duly noticed to attend, the Authority did not receive any notification from the Telecommunications Resellers Association as to whether or not it would have a representative in attendance at the Pre-Hearing Conference.

At the Pre-Hearing Conference, BellSouth produced a revised IntraLATA Toll Dialing Parity Plan (Revised Plan") which it had prepared based upon the proposed agreement and upon further discussions with the parties to the docket. All of the parties in attendance



acknowledged that they had received and reviewed a copy of the Revised Plan prior to the Pre-Hearing Conference. The Pre-Hearing Conference was recessed while Staff and the Pre-Hearing Officer reviewed the Revised Plan for the first time.

Upon resuming the Conference, each party was polled as to whether it had any objections to the Revised Plan. Only the Consumer Advocate voiced an objection to the Revised Plan and that objection went to the Section IV. *Carrier Selection Procedures: New Installation Customers*. The Consumer Advocate asserted that rather than stating that discussion guidelines would be provided to customer contact representatives, BellSouth should set forth the text of those discussion guidelines as a part of the Revised Plan. No other party expressed an objection to the language used by BellSouth in the Revised Plan.

After reviewing the Revised Plan, Authority Staff had two recommended changes to the Revised Plan. The first change would amend the last sentence in Section IV. *Carrier Selection Procedures: New Installation Customers* to read as follows:

Customers who do not make a positive choice for an intraLATA toll carrier will be notified that they will not be automatically defaulted to a carrier and will be required to dial an access code to place intraLATA toll calls until they make an affirmative choice for an intraLATA toll carrier. (The Authority Staff's recommended changes are underlined.)

The second change was to require BellSouth to add a Section X. that would set forth the following language:

BellSouth will comply with all applicable rules of the Federal Communications Commission and the Tennessee Regulatory Authority.

During the Pre-Hearing Conference, counsel for BellSouth contacted BellSouth representatives and obtained permission to include both of the Authority Staff's recommended changes in the Revised Plan.

The Pre-Hearing Officer asked BellSouth to make the recommended changes in the Revised Plan and to file the amended version with the Authority during the afternoon of February 5. BellSouth complied with the Pre-Hearing Officer's request and filed a Second Revised IntraLATA Toll Dialing Parity Plan on the afternoon of February 5, 1999. A copy of the Second Revised Plan is attached to this Report and Recommendation as Exhibit B.

At the Pre-Hearing Conference, the parties were advised by the Pre-Hearing Officer that BellSouth's IntraLATA Toll Dialing Parity Plan would be submitted to the Directors on Monday, February 8, 1999, at 8:00 a.m. for their consideration. The parties were advised to have attorneys and witnesses present on February 8, 1999, in the event that the Directors had questions concerning any part of the proposed plan. The format would be that of a hearing and witnesses would be sworn and would testify in response to any questions.

#### Recommendations

Based upon a review of the Second Revised Plan submitted by BellSouth and on the lack of objection by the parties to the plan (the Consumer Advocate's objection being noted), the Pre-Hearing Officer recommends that BellSouth's IntraLATA Toll Dialing Parity Plan, as reflected in the Second Revised Plan filed on February 5, 1999, be approved by the Authority for implementation on February 8, 1999. The Pre-Hearing Officer further recommends that, should the Directors have any questions concerning the proposed plan, the parties should produce witnesses and provide sworn testimony to respond to those questions. In the event

that such testimony is requested, the proceeding will be conducted as a hearing and the testimony and proposed plan will be entered into the evidentiary record.

ATTEST:

  
EXECUTIVE SECRETARY

  
RICHARD COLLIER, ACTING AS  
PRE-HEARING OFFICER

Date: February 5, 1999

REC'D TN  
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EXECUTIVE SECRETARY

February 3, 1999

**BY HAND**

David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Petition of BellSouth Telecommunications, Inc. for Approval of an IntraLATA Toll  
Dialing Parity Implementation Plan*  
Docket No. 97-01399

Dear Mr. Waddell:

As agreed at the Sunshine Meeting yesterday, attached is a letter from Mr. Hicks which sets forth the compromise settlement reached by AT&T and BellSouth in this proceeding.

Sincerely,

  
Jim Lamoureux

Encls.

cc: Counsel for all Parties of Record (w/encls.)(by facsimile)  
Chairman Malone  
Director Greer  
Director Kyle  
Richard Collier



**© BELL SOUTH**

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Guy M. Hicks  
General Counsel

February 1, 1999

**VIA TELECOPIER**

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Re: *Petition of BellSouth Telecommunications, Inc. for Approval of an IntraLATA  
Toll Dialing Parity Implementation Plan*  
Docket No. 97-01399

Dear Counsel:

This letter will outline the terms of the settlement reached between AT&T and BellSouth concerning implementation of 1+ intraLATA subscription in Tennessee. Although BellSouth does not agree that the FCC's rule requiring implementation of 1+ intraLATA subscription is currently in effect, BellSouth is willing to forego these arguments and implement 1+ intraLATA subscription in Tennessee by February 8, 1999, subject to the approval of BellSouth's proposed implementation plan with the following modifications:

- Cost recovery for 1+ intraLATA subscription will be based upon originating SWA FGD intrastate access minutes of use.
- Customers will be given a period of ninety (90) days within which to make one change of their preferred intraLATA carrier at no cost to the customer. Costs associated with this waiver will be recovered through the general cost recovery mechanism. The waiver period will commence as soon as practicable after BellSouth has implemented the necessary changes to its billing systems to accommodate a waiver of the intraLATA PIC change charge. It is expected that these changes will be made in Tennessee no later than February 14, 1999. Until BellSouth has implemented the necessary changes to its billing system to accommodate a waiver of the intraLATA PIC

February 1, 1999

Page 2

change charge, BellSouth will bill customers at the prices set forth in BellSouth's implementation plan.

- BellSouth's customer notification materials will be modified to address the ninety (90) day waiver period, and the parties will work together in good faith to agree upon mutually acceptable language. This language will be included in BellSouth's revised implementation plan, which will be submitted to the Authority for approval.
- BellSouth will comply with the applicable rules of the Tennessee Regulatory Authority which require a moratorium on PIC freezes.

This settlement is contingent upon the approval of all the parties. Please let me know as soon as possible whether this settlement agreement is acceptable.

Yours very truly,



Guy M. Hicks

cc: William J. Ellenberg II, Esquire  
James Lamoureux, Esquire

150041

**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 1999 a record, via hand delivery, facsimile, overnight or US Mail, addressed as follows:

Richard Collier, Esquire  
Tennessee Regulatory Authority  
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Nashville, TN 37243-0500

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Kelley, Drye & Warren  
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James P. Lamoureux

**© BELLSOUTH**

REC'D TN

TENNESSEE REGULATORY AUTH.

FEB 9 5 57 PM 1999

OFFICE OF THE  
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition of BellSouth Telecommunications, Inc. for Approval of an IntraLATA Toll  
Dialing Parity Implementation Plan*  
Docket No. 97-01399

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Second Revised IntraLATA Toll Dialing Parity Plan. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

  
Guy M. Hicks

GMH:ch  
Enclosure





**Petition of BellSouth Telecommunications, Inc.  
For Approval of an IntraLATA Toll Dialing  
Parity Implementation Plan**

**~ SECOND REVISED ~**

**IntraLATA Toll Dialing Parity Plan**

**February 8, 1999  
Implementation Date**

**BellSouth Telecommunications, Inc.  
Tennessee**

**February 3, 1999**

## **I. Purpose**

BellSouth Telecommunication, Inc. (BellSouth) has described herein the process for implementing intraLATA toll dialing parity in the BellSouth exchanges located in the state of Tennessee. The intent of this Plan is to provide a proposal that, upon implementation, would provide customers the ability to select the telecommunications carrier of their choice for routing their intraLATA toll calls.

## **II. IntraLATA Environment**

BellSouth customers in Tennessee in the BellSouth area can currently dial an access code to complete intraLATA toll calls to another carrier. After implementation of the intraLATA toll dialing plan, customers will be able to subscribe to the carrier of their choice for intraLATA as well as interLATA service (two-PIC subscription capability). Customers will dial 1+ the area code and number to complete calls using their subscribed carrier. If customers wish to complete a call using a carrier other than their subscribed carrier, they will need to dial the carrier's access code.

Each end office switch will be equipped with the capability of allowing each end user subscriber to select "no-PIC" as a valid intraLATA subscription selection. Customers selecting "no-PIC" as their subscribed carrier will not be able to make intraLATA toll calls on a 1+ or 0+ dialed basis. Such customer will need to dial an access code each time he or she makes an intraLATA call.

In 1992, toll-free intraLATA county-wide calling was initiated for BellSouth via an order from the Tennessee Public Service Commission. BellSouth currently maintains tax-code billing tables to identify "free county-wide" intraLATA toll calls originated by BellSouth intraLATA toll customers and to ensure that billing does not occur on these calls. BellSouth will continue to process toll-free intraLATA county-wide calls in this manner for its intraLATA toll customers after implementation of intraLATA toll dialing.

## **III. Implementation Schedule**

BellSouth will provide intraLATA toll dialing parity in Tennessee on February 8, 1999.

## **IV. Carrier Selection Procedures**

BellSouth will implement the full Two-PIC (Primary Interexchange Carrier) carrier selection methodology. With the full two-PIC methodology, customers will be able to subscribe to one telecommunications carrier for interLATA toll calls and subscribe to the same or a different participating telecommunications carrier.

including BellSouth, for all intraLATA toll calls. Orders for changes will be accepted and processed beginning on the implementation date.

BellSouth employees who communicate with the public, accept customer orders, and serve in customer service capacities will be trained to explain to customers the process for making PIC changes for intraLATA toll calls. Business Office personnel and the Customer Account Records Exchange (CARE) system will be prepared to make changes in customer records based upon requests from customers or carriers and direct customers to their chosen intraLATA carriers. Processes will be in place to provide new customers with an opportunity to choose their intraLATA toll carrier from a list of available carriers.

#### *Existing Customers*

Currently, BellSouth is the only subscribed intraLATA toll provider for existing customers in BellSouth's local exchange area. On February 8, 1999, customers may subscribe to BellSouth or any telecommunications carrier offering intraLATA toll service in their exchange. Customers will remain with BellSouth until they affirmatively choose an intraLATA toll carrier. Customers may make this selection through their own initiative or as a result of the promotional marketing activities of participating intraLATA toll telecommunications carriers. Customers may communicate their choice of carriers to BellSouth directly or through their selected carriers.

Customers will be assessed a cost-based PIC change charge for changing their intraLATA carrier at a rate of \$1.49. When customers request a simultaneous change to the same carrier for their interLATA and intraLATA service, BellSouth will assess one PIC charge out of the interLATA tariff and a reduced rate out of the intraLATA tariff. The reduced rate intraLATA PIC charge will be \$ .45. Two full PIC change charges (an interLATA charge and an intraLATA charge) will be assessed if different carriers are chosen.

A charge will be established for unauthorized PIC changes submitted by carriers to BellSouth for end-user customers (slamming). BellSouth also allows carriers to subscribe to an expedited PIC switchback service ("EPSS"). EPSS provides an expedited method of handling disputed intraLATA PIC changes for end users. If an end user disputes a change in its intraLATA PIC, and the IC participates in EPSS, the end user or location provider or its authorized agent will be returned to its former intraLATA carrier. If the end user specifically requests, an investigation will be conducted and the appropriate slamming charges will apply.

### ***New Installation Customers***

BellSouth customer contact representatives will be provided discussion guidelines that will provide a new customer with the following information:

1. Inform the customer that a choice of intraLATA toll providers is now available to him or her.
2. Offer to read the customer a list of available carriers in randomly generated order.
3. Advise the customer that various carriers provide intraLATA toll service and that BellSouth is one of those carriers.

Customers who do not make a positive choice for an intraLATA toll carrier will be notified that they will not be automatically defaulted to a carrier and will be required to dial an access code to place intraLATA toll calls until they make an affirmative choice for an intraLATA toll carrier.

### ***PIC Charge Waiver Period***

Customers will be given a period of ninety (90) days within which to make one change of their preferred carrier at no cost to the customer. This waiver period will begin on February 8, 1999. The costs associated with this waiver will be recovered through the general cost recovery mechanism.

## **V. Customer Education/Notification**

At the time of implementation, February 8, 1999, the TRA will issue a press release announcing the availability of intraLATA 1+ subscription. This press release will announce the opportunity to choose a primary intraLATA carriers and explain the 90 day waiver period from February 8, 1999 to May 8, 1999.

BellSouth will notify all existing end users via a bill message and a bill insert regarding intraLATA subscription implementation and explain their opportunity to select an intraLATA carrier. The wording of the customer notification includes an explanation of the PIC change charge waiver period and is shown as Exhibit A. Customer telephone directories will be updated as new editions are published to reflect the opportunity for customers to choose an intraLATA toll carrier. After implementation, all new customers will be advised of intraLATA availability and requested to make an intraLATA carrier selection.

## **VI Carrier Notification**

Current interexchange carriers will be notified of BellSouth intraLATA toll dialing parity implementation via letter at implementation. Carriers that currently participate in interLATA toll will be assumed to be participants in the IntraLATA toll

market. Certified carriers who enter the market after implementation will be added to the list of participating carriers within 30 days of notifying BellSouth.

BellSouth offers BellSouth Listed Name and Address and BellSouth Change Activity Register services for the purpose of assisting the carrier's marketing efforts in connection with marketing their telecommunications services. BellSouth Listed Name and Address service provides a list of customers available for subscription within BellSouth central offices. The database is updated monthly.

BellSouth Change Activity Register service provides the carrier a list of customer change activity on end users not subscribed to the ordering IC. Information is provided on a daily basis.

## **VII. Calls Not Subject to Subscription**

The following calls are not impacted by intraLATA toll dialing parity because they are dealt with through proceedings concerning new alternate local exchange carriers: 911, 411, N11, Local Repair, 0-, and local 0+ calls.

The following calls are not impacted by intraLATA toll dialing parity: HNPA 555-1212, and calls using 500, 700, 800, 888 and 900.

## **VIII. Cost Recovery**

In accordance with 51.215 of FCC Order 96-333, CC Docket No. 96-98, cost recovery for the incremental cost of dialing parity; specific switch software, any necessary hardware and signaling system upgrades, and customer education costs that are strictly necessary to implement dialing parity, will be implemented in a competitively neutral manner across all providers of telephone exchange service and telephone toll service in the area served by BellSouth. Incremental costs will be recovered from all carriers through a rate element based upon originating intrastate switched access minutes of use (MOUs) during the 5 year cost recovery period. BellSouth will participate based on Toll conversation MOUs that will be equated to originating intrastate switched access MOUs. Attached, as Exhibit B, is a detailed explanation of the Cost Recovery methodology. An annual true-up will be conducted and reported to the TRA.

## **IX. IntraLATA PIC Freeze Moratorium**

BellSouth will adhere to the TRA slamming rules and will place a moratorium on intraLATA PIC freezes for 180 days that will expire on August 6, 1999.

**X. Statement of Compliance**

BellSouth will comply with all rules of the FCC and the TRA.

**BellSouth IntraLATA Toll Dialing Parity  
Revised Implementation Plan  
February 3, 1999**

**Exhibit A**

**Bill Message**

"BellSouth implemented local toll 1+ subscription service on February 8, 1999. You are now able to choose a local toll provider. BellSouth will continue to provide this service for you or you may select another carrier. You may select the same provider as your long distance service or you may select a different provider for each service. Your first selection prior to May 8, 1999 will be free."

**Bill Insert**

**IMPORTANT NOTICE ABOUT LOCAL TOLL SERVICE**

"As of February 8, 1999, you are now able to choose your provider of "1+" local toll service. Currently, local toll calls dialed as "1+ ten digit" calls are handled by BellSouth. This change allows you to remain with BellSouth or select a different long distance carrier for local toll calls. Please refer to the information pages in the front of your BellSouth telephone directory under "Long Distance - Calling Area" for a description of your local toll calling area.

If you would like to select a different carrier for your "1+" local toll service, you should contact that company. No action is necessary to keep BellSouth as your provider for these local toll calls.

From February 8, 1999 until May 8, 1999, you will be able to change your local toll carrier one time without charge. There may be a charge for each subsequent change you make in local toll companies."

BellSouth IntraLATA Toll Dialing Parity  
Revised Implementation Plan  
February 3, 1999

Exhibit B

**TENNESSEE  
METHODOLOGY FOR RECOVERY OF COSTS  
ASSOCIATED WITH  
IMPLEMENTATION OF INTRALATA SUBSCRIPTION**

**CALCULATION OF INITIAL EQUAL ACCESS RATE ELEMENT**

Step 1: Identify the total incremental costs directly attributable to the provisioning of IntraLATA Subscription.

\$

Step 2: For most recent twelve month period, identify total FGD Originating intrastate switched access:

Step 3: For most recent twelve month period, identify BellSouth Toll Conversation MOUs. Convert to equivalent Access MOUs using a 1.1 conversion factor:

Step 4: Sum the Total FGD Switched Access MOUs and BellSouth converted Access MOUs identified in Step 2 and Step 3. Assume constant demand for the 5 year cost recovery period and calculate the Present Worth of the 5 years of demand:

Step 5: Calculate a cost recovery rate by dividing amount in Step 1 by the Present Worth of Access MOUs in Step 4:

\$0.000181

**ANNUAL TRUE-UP OF EQUAL ACCESS RATE ELEMENT**

Repeat Steps 1 through 5 and calculate an updated access rate element by dividing amount in Step 1, adjusted by the previous year/years cost recovery (including IXC and BST), by the Present Worth of the remaining years demand in the cost recovery process.

a



**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 1999, a copy of the foregoing document was served on the parties of record, via hand delivery or U.S. Mail, postage-prepaid, addressed as follows:

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

Vincent Williams  
Consumer Advocate Division  
426 Fifth Ave., N., 2<sup>nd</sup> Fl.  
Nashville, TN 37243-0500

Jon E. Hastings, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

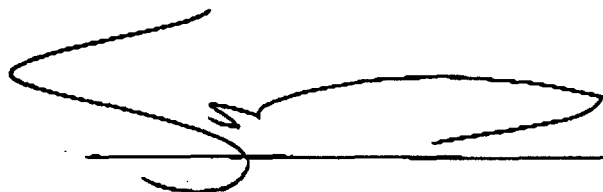
Dana Shaffer, Esquire  
Nextlink  
105 Malloy Street, #300  
Nashville, TN 37201

James P. Lamoureux  
AT&T  
1200 Peachtree St., NE, #4068  
Atlanta, GA 30367

Henry Walker, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

Carolyn Tatum Roddy, Esquire  
Sprint Communications  
3100 Cumberland Circle, N0802  
Atlanta, GA 30339

Andrew O. Isar, Esquire  
Telecommunications Resellers Association  
4312 92nd Ave., NW  
Gig Harbor, WA 98335

A handwritten signature in black ink, appearing to be 'S. Williams', written over a horizontal line.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers	)	1.87-11-033
	)	
	)	A.85-01-034
	)	A.87-01-002
And Related Matters	)	1.85-03-078
(IntraLATA Presubscription Phase	)	1.87-02-025
	)	Case 87-07-024
	)	

**PACIFIC BELL'S (U 1001 C) COMMENTS**  
**PURSUANT TO ASSIGNED COMMISSIONER'S RULING**  
**DATED FEBRUARY 3, 1999**

Pursuant to the Assigned Commissioner's Ruling dated February 3, 1999, Pacific hereby submits its comments addressing the questions posed by the Assigned Commissioner's Ruling at page 2.

*When does Pacific intend to implement dialing parity in California in light of the Supreme Court's January 25, 1999 decision?*

Pacific intends to implement dialing parity coincident with its affiliate's entry into the long-distance market. Petitioners erroneously contend that the Supreme Court's January 25, 1999 decision automatically reinstates the FCC's dialing parity rules contained in the Second Report and Order, without further proceedings. However, the Supreme Court does not issue a mandate until twenty five days after a decision has been issued. Assuming a mandate is issued without any changes from the January 25 decision, the matter is remanded to the Eighth Circuit Court of Appeals for further proceedings consistent with the Supreme Court's decision. The Eighth Circuit should find on remand that, even if the FCC has jurisdiction to provide guidance to the states on intrastate intraLATA matters generally, the FCC's February 8, 1999 implementation mandate nevertheless runs contrary to the Act's specific and exclusive grant of authority to the States to determine the date on which dialing parity should

be implemented if a BOC has not been granted interLATA relief by February 8, 1999. Accordingly, unless otherwise expressly directed by the Supreme Court or the Eighth Circuit on remand, or unless otherwise ordered by this Commission, Pacific intends to implement dialing parity coincident with its affiliate's entry into the long-distance market.

Should Pacific be ordered to provide dialing parity prior to its affiliate's entry into the long-distance market, Pacific may require up to 180 days from the date that it is so ordered.

*What reasonable adjustments need to be made to the notice requirements set forth in*

*OP 14 of D.97-04-083?*

Assuming the Eighth Circuit upholds Section 271(e)(2)(B) of the Act on remand, no changes need to be made to the notice requirements. However, assuming Pacific is ordered to provide dialing parity prior to its affiliate's entry into long-distance, the notice requirements in D.97-04-083, as well as any other provisions or terms in that decision that were premised on coincident long-distance entry, including the settlement agreement referenced in Ordering Paragraph 7, will need to be re-examined.<sup>1</sup>

Respectfully submitted by PACIFIC BELL

  
JAMES B. YOUNG  
BY KOLTO-WININGER

140 New Montgomery Street, Rm. 1619  
San Francisco, California 94105  
(415) 545-9422

Its Attorneys

Date: February 8, 1999

<sup>1</sup> Pacific is also submitting to the Commission staff draft scripts in compliance with the Assigned Commissioner's Ruling requesting such drafts. The scripts were drafted in accordance with D.97-04-083 and therefore are expressly premised on Pacific providing intraLATA presubscription coincident with its affiliate's entry into long-distance. Thus, the draft scripts would not be appropriate under any other circumstances.

**CERTIFICATE OF SERVICE**

I, Lila Tam certify that the following is true and correct:


I am a citizen of the United States, State of California, am over eighteen years of age, and am not a party to the within cause.

My business address is 140 New Montgomery Street, San Francisco, California 94105.

On February 8, 1999, I served the attached PACIFIC BELL'S (U 1001 C) COMMENTS PURSUANT TO ASSIGNED COMMISSIONER'S RULING DATED FEBRUARY 3, 1999 L87-11-033 by placing true copies thereof in envelopes addressed to the parties in the attached list, which envelopes, with postage thereon fully prepaid, I then sealed and deposited in a mailbox regularly maintained by the United States Government in the City and County of San Francisco, State of California.

Executed this 8th day of February, 1999, at San Francisco, California.

PACIFIC BELL  
140 New Montgomery Street  
San Francisco, CA 94105

BY  \_\_\_\_\_  
LILA TAM



Western Public Policy Group

201 Spear Street, 9th Floor  
San Francisco, CA 94105  
Tel: (415) 228-1100  
Fax: (415) 228-1094

Mary deLuca v 220-3175  
Mary Brown v 220-2676

TO: Tony Epstein (202) 639-6066

FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM:

\_\_\_\_ Jim Lewis 415-228-1004 / v620-1004  
\_\_\_\_ William Harrelson 415-228-1090 / v620-1090  
\_\_\_\_ Timothy Davis 415-228-1515 / v620-1515  
\_\_\_\_ Joan McCormack 415-228-1133 / v620-1133  
\_\_\_\_ Evelyn Lee 415-228-1264 / v620-1264  
\_\_\_\_ X Leslie Watkins 415-228-1245 / v620-1245  
\_\_\_\_ Louie DeCarlo 415-228-2133 / v620-2133  
\_\_\_\_ Robert Muñoz 415-228-1135 / v620-1135  
\_\_\_\_ Pat Gideon 415-228-1349 / v620-1349

\_\_\_\_ Richard Severy 415-228-1121 / v620-1121  
\_\_\_\_ Tony DiTirro 415-228-2075 / v620-2075  
\_\_\_\_ Pat Chow 415-228-1129 / v620-1129  
\_\_\_\_ Schimen Scott 415-228-1408 / v620-1408  
\_\_\_\_ Randee Klindworth 415-228-1445 / v620-1445  
\_\_\_\_ Nikayla Nail 415-228-1150 / v620-1150  
\_\_\_\_ Michelle deVillers 415-228-1199 / v620-1199  
\_\_\_\_ Eric Artman 415-228-1447 / v620-1447  
\_\_\_\_ Other \_\_\_\_\_

DATE: 02-09-99

Pages (including cover): 4

Comments:

*Per Dick Severy's request*

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory  
Frameworks for Local Exchange Carriers

) L87-11-033

) A.85-01-034

) A.87-01-002

And Related Matters

) L85-03-078

(IntraLATA Presubscription Phase

) L87-02-025

) Case 87-07-024

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**PURSUANT TO ASSIGNED COMMISSIONER'S RULING**  
**DATED FEBRUARY 3, 1999**

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Respectfully submitted by PACIFIC BELL

  
JAMES B. YOUNG  
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140 New Montgomery Street, Rm. 1619  
San Francisco, California 94115  
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Its Attorneys

Date: February 8, 1999

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AT&T - Federal Government Affairs  
1120 - 20th Street, NW, Suite 1000  
Washington, DC 20036

Faxes: 202-457-2545 & 202-457-2165

Bailey Fax: 202-457-3205

Mailroom Faxes: 202-457-3110 & 202-457-2157

DATE:

TO:

MARY DeLUCA

FAX:

887-3175

_____	Alvarez, Amy	202-457-2315
_____	Bailey, Rick	202-457-2131
_____	Brady, Betsy	202-457-3824
_____	Cali, Len	202-457-2120
_____	Del Casino, Mike	202-457-2023
_____	Green, Julianne	202-457-3897
_____	Griffin, Charles	202-457-3926
_____	Hagemeister, Kristina	202-457-3862
_____	Hsia, Janet	202-457-3808
_____	Honorat, Michelle	202-457-3846
_____	Lewis, Al	202-457-2009
_____	Macomber, Debbie	202-457-3807
_____	Masterson, Brian	202-457-3803
_____	Quinn, Bob	202-457-3851
_____	Reilly, John	202-457-3119
_____	Schoenberger, Doug	202-457-2118
<u>✓</u>	Simone, Frank	202-457-2321
_____	Sirotnak, Jodi	202-457-3854
_____	Simonson, Judy	202-457-3890
_____	Spurlock, Jim	202-457-3878
_____	Thatcher, Kristen	202-457-3883
_____	Winkler, Susan	202-457-2153
_____		202-457-_____

Page 1 of 3 Pages

MESSAGE

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**Petition of BellSouth Telecommunications, Inc.  
For Approval of an IntraLATA Toll Dialing  
Parity Implementation Plan**

**~ REVISED ~**

**IntraLATA Toll Dialing Parity Plan**

**February 8, 1999  
Implementation Date**

**BellSouth Telecommunications, Inc.  
Tennessee**

**February 3, 1999**

## **I. Purpose**

BellSouth Telecommunication, Inc. (BellSouth) has described herein the process for implementing intraLATA toll dialing parity in the BellSouth exchanges located in the state of Tennessee. The intent of this Plan is to provide a proposal that, upon implementation, would provide customers the ability to select the telecommunications carrier of their choice for routing their intraLATA toll calls.

## **II. IntraLATA Environment**

BellSouth customers in Tennessee in the BellSouth area can currently dial an access code to complete intraLATA toll calls to another carrier. After implementation of the intraLATA toll dialing plan, customers will be able to subscribe to the carrier of their choice for intraLATA as well as interLATA service (two-PIC subscription capability). Customers will dial 1+ the area code and number to complete calls using their subscribed carrier. If customers wish to complete a call using a carrier other than their subscribed carrier, they will need to dial the carrier's access code.

Each end office switch will be equipped with the capability of allowing each end user subscriber to select "no-PIC" as a valid intraLATA subscription selection. Customers selecting "no-PIC" as their subscribed carrier will not be able to make intraLATA toll calls on a 1+ or 0+ dialed basis. Such customer will need to dial an access code each time he or she makes an intraLATA call.

In 1992, toll-free intraLATA county-wide calling was initiated for BellSouth via an order from the Tennessee Public Service Commission. BellSouth currently maintains tax-code billing tables to identify "free county-wide" intraLATA toll calls originated by BellSouth intraLATA toll customers and to ensure that billing does not occur on these calls. BellSouth will continue to process toll-free intraLATA county-wide calls in this manner for its intraLATA toll customers after implementation of intraLATA toll dialing.

## **III. Implementation Schedule**

BellSouth will provide intraLATA toll dialing parity in Tennessee on February 8, 1999.

## **IV. Carrier Selection Procedures**

BellSouth will implement the full Two-PIC (Primary Interexchange Carrier) carrier selection methodology. With the full two-PIC methodology, customers will be able to subscribe to one telecommunications carrier for interLATA toll calls and subscribe to the same or a different participating telecommunications carrier,

including BellSouth, for all intraLATA toll calls. Orders for changes will be accepted and processed beginning on the implementation date.

BellSouth employees who communicate with the public, accept customer orders, and serve in customer service capacities will be trained to explain to customers the process for making PIC changes for intraLATA toll calls. Business Office personnel and the Customer Account Records Exchange (CARE) system will be prepared to make changes in customer records based upon requests from customers or carriers and direct customers to their chosen intraLATA carriers. Processes will be in place to provide new customers with an opportunity to choose their intraLATA toll carrier from a list of available carriers.

### *Existing Customers*

Currently, BellSouth is the only subscribed intraLATA toll provider for existing customers in BellSouth's local exchange area. On February 8, 1999, customers may subscribe to BellSouth or any telecommunications carrier offering intraLATA toll service in their exchange. Customers will remain with BellSouth until they affirmatively choose an intraLATA toll carrier. Customers may make this selection through their own initiative or as a result of the promotional marketing activities of participating intraLATA toll telecommunications carriers. Customers may communicate their choice of carriers to BellSouth directly or through their selected carriers.

Customers will be assessed a cost-based PIC change charge for changing their intraLATA carrier at a rate of \$1.45. When customers request a simultaneous change to the same carrier for their interLATA and intraLATA service, BellSouth will assess one PIC charge out of the interLATA tariff and a reduced rate out of the intraLATA tariff. The reduced rate intraLATA PIC charge will be \$ .45. Two full PIC change charges (an interLATA charge and an intraLATA charge) will be assessed if different carriers are chosen.

A charge will be established for unauthorized PIC changes submitted by carriers to BellSouth for end-user customers (slamming). BellSouth also allows carriers to subscribe to an expedited PIC switchback service ("EPSS"). EPSS provides an expedited method of handling disputed intraLATA PIC changes for end users. If an end user disputes a change in its intraLATA PIC, and the IC participates in EPSS, the end user or location provider or its authorized agent will be returned to its former intraLATA carrier. If the end user specifically requests, an investigation will be conducted and the appropriate slamming charges will apply.

### ***New Installation Customers***

BellSouth customer contact representatives will be provided discussion guidelines that will provide a new customer with the following information:

1. Inform the customer that a choice of intraLATA toll providers is now available to him or her.
2. Offer to read the customer a list of available carriers in randomly generated order.
3. Advise the customer that various carriers provide intraLATA toll service and that BellSouth is one of those carriers.

Customers who do not make a positive choice for an intraLATA toll carrier will not be automatically defaulted to a carrier and will be required to dial an access code to place intraLATA toll calls until they make an affirmative choice for an intraLATA toll carrier.

### ***PIC Charge Waiver Period***

Customers will be given a period of ninety (90) days within which to make one change of their preferred carrier at no cost to the customer. This waiver period will begin on February 8, 1999. The costs associated with this waiver will be recovered through the general cost recovery mechanism.

## **V. Customer Education/Notification**

At the time of implementation, February 8, 1999, the TRA will issue a press release announcing the availability of intraLATA 1+ subscription. This press release will announce the opportunity to choose a primary intraLATA carriers and explain the 90 day waiver period from February 8, 1999 to May 8, 1999.

BellSouth will notify all existing end users via a bill message and a bill insert regarding intraLATA subscription implementation and explain their opportunity to select an intraLATA carrier. The wording of the customer notification includes an explanation of the PIC change charge waiver period and is shown as Exhibit A. Customer telephone directories will be updated as new editions are published to reflect the opportunity for customers to choose an intraLATA toll carrier. After implementation, all new customers will be advised of intraLATA availability and requested to make an intraLATA carrier selection.

## **VI Carrier Notification**

Current interexchange carriers will be notified of BellSouth intraLATA toll dialing parity implementation via letter at implementation. Carriers that currently participate in interLATA toll will be assumed to be participants in the intraLATA toll

market. Certified carriers who enter the market after implementation will be added to the list of participating carriers within 30 days of notifying BellSouth.

BellSouth offers BellSouth Listed Name and Address and BellSouth Change Activity Register services for the purpose of assisting the carrier's marketing efforts in connection with marketing their telecommunications services. BellSouth Listed Name and Address service provides a list of customers available for subscription within BellSouth central offices. The database is updated monthly.

BellSouth Change Activity Register service provides the carrier a list of customer change activity on end users not subscribed to the ordering IC. Information is provided on a daily basis.

## **VII. Calls Not Subject to Subscription**

The following calls are not impacted by intraLATA toll dialing parity because they are dealt with through proceedings concerning new alternate local exchange carriers: 911, 411, N11, Local Repair, 0-, and local 0+ calls.

The following calls are not impacted by intraLATA toll dialing parity: HNP 555-1212, and calls using 500, 700, 800, 888 and 900.

## **VIII. Cost Recovery**

In accordance with 51.215 of FCC Order 96-333, CC Docket No. 96-98, cost recovery for the incremental cost of dialing parity; specific switch software, any necessary hardware and signaling system upgrades, and customer education costs that are strictly necessary to implement dialing parity, will be implemented in a competitively neutral manner across all providers of telephone exchange service and telephone toll service in the area served by BellSouth. Incremental costs will be recovered from all carriers through a rate element based upon originating intrastate switched access minutes of use (MOUs) during the 5 year cost recovery period. BellSouth will participate based on Toll conversation MOUs that will be equated to originating intrastate switched access MOUs. Attached, as Exhibit B, is a detailed explanation of the Cost Recovery methodology. An annual true-up will be conducted and reported to the TRA.

## **IX. IntraLATA PIC Freeze Moratorium**

BellSouth will adhere to the TRA slamming rules and will place a moratorium on intraLATA PIC freezes for 180 days that will expire on August 6, 1999.

**BellSouth IntraLATA Toll Dialing Parity  
Revised Implementation Plan  
February 3, 1999**

**Exhibit A**

**Bill Message**

**"BellSouth implemented local toll 1+ subscription service on February 8, 1999. You are now able to choose a local toll provider. BellSouth will continue to provide this service for you or you may select another carrier. You may select the same provider as your long distance service or you may select a different provider for each service. Your first selection prior to May 8, 1999 will be free."**

**Bill Insert**

**IMPORTANT NOTICE ABOUT LOCAL TOLL SERVICE**

**"As of February 8, 1999, you are now able to choose your provider of "1+" local toll service. Currently, local toll calls dialed as "1+ ten digit" calls are handled by BellSouth. This change allows you to remain with BellSouth or select a different long distance carrier for local toll calls. Please refer to the information pages in the front of your BellSouth telephone directory under "Long Distance - Calling Area" for a description of your local toll calling area.**

**If you would like to select a different carrier for your "1+" local toll service, you should contact that company. No action is necessary to keep BellSouth as your provider for these local toll calls.**

**From February 8, 1999 until May 8, 1999, you will be able to change your local toll carrier one time without charge. There may be a charge for each subsequent change you make in local toll companies."**



BellSouth IntraLATA Toll Dialing Party  
Revised Implementation Plan  
February 3, 1999

Exhibit B

**TENNESSEE  
METHODOLOGY FOR RECOVERY OF COSTS  
ASSOCIATED WITH  
IMPLEMENTATION OF INTRALATA SUBSCRIPTION**

**CALCUATION OF INITIAL EQUAL ACCESS RATE ELEMENT**

Step 1: Identify the total incremental costs directly attributable to the provisioning of IntraLATA Subscription.

**\$**

Step 2: For most recent twelve month period, identify total FGD Originating intrastate switched access:

Step 3: For most recent twelve month period, identify BellSouth Toll Conversation MOUs. Convert to equivalent Access MOUs using a 1.1 conversion factor:

Step 4: Sum the Total FGD Switched Access MOUs and BellSouth converted Access MOUs identified in Step 2 and Step 3. Assume constant demand for the 5 year cost recovery period and calculate the Present Worth of the 5 years of demand:

Step 5: Calculate a cost recovery rate by dividing amount in Step 1 by the Present Worth of Access MOUs in Step 4:

**\$0.000181**

**ANNUAL TRUE-UP OF EQUAL ACCESS RATE ELEMENT**

Repeat Steps 1 through 5 and calculate an updated access rate element by dividing amount in Step 1, adjusted by the previous year/years cost recovery (including IXC and BST), by the Present Worth of the remaining years demand in the cost recovery process.

a





**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006

**RECEIVED**

**FEB 2 1999**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**RECEIVED**

**FEB 25 1999**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

January 22, 1999

Ms. Magalie Roman Salas  
Secretary Federal Communication Commission  
1919 M Street, N.W.  
Washington, DC 20554

**EX PARTE PRESENTATION**

*Re: In the Matter of Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief, NSD File L-98-121; CC Docket No. 96-98*

Dear Ms. Salas:

The attached letter was delivered to listed members of the Common Carrier Bureau on January 22, 1999 to express concerns in the above referenced proceeding.

Please include this letter in the record of these proceedings in accordance with Section 1.1206 (a)(2) of the Commission Rules.

Please contact me should you have any questions at 202.887.3045.

Respectfully submitted,

Mary De Luca  
Senior Policy Advisor,  
Federal Regulatory  
MCI Worldcom, Inc.



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006

January 22, 1999

Anna M. Gomez  
Chief, Network Service Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 M Street, NW  
Washington, DC 20554

*Ex Parte Presentation*

Re: *Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief*, NSD File L-98-121; CC Docket No. 96-98

Dear Ms. Gomez:

In ex parte letters filed on December 30, December 31, 1998, and January 4, 1999, BellSouth, US West (USW) and Bell Atlantic, respectively, ask to be considered for the same relief requested by SBC in its exparte letter of December 22, 1998.

Specifically, SBC declared that it will "accept" a compromise resolution in its responsibility to implement interstate intraLATA dialing parity in the SBC states. SBC proposed that it would implement interstate intraLATA dialing parity under one of three conditions:

1. Coincident with a state order to implement intrastate intraLATA dialing parity if ordered prior to March 31, 2000;
2. Where no such order exists, SBC LECs' will implement interstate intraLATA dialing parity no later than March 31, 2000;
3. SBC will not seek any further waivers from the Commission to delay interstate intraLATA dialing parity competition.

In my letter to you dated January 12, 1999, MCI Worldcom, Inc (MCI Worldcom) explained that we oppose any compromise with SBC on intraLATA dialing parity because SBC failed to show good cause behind its arbitrary implementation date of March 31, 2000 and, in any event, the Commission cannot waive implementation of the requirements of Section 251(b)(3) of the Act.<sup>1</sup> We also notified the Common Carrier Bureau of possible violations of the Commission's ex parte rules by SBC.

---

<sup>1</sup> Section 251(b)(3) of the Act requires ALL LECs to provide local and toll dialing parity.

Within days of SBC's December 22 letter, three RBOCs, BellSouth, Bell Atlantic and USWest filed separate, yet remarkably similar ex parte letters asking the Commission for the same relief. Bell Atlantic and USWest also "will agree" to the three condition put forth by SBC. BellSouth on the other hand will only "agree" to the first two of SBC conditions while stating that it will "not waive its right to advocate in state jurisdictions that its obligation to provide toll dialing parity is appropriate only when it is coincident with BST's entry into the interLATA market."<sup>2</sup>

Once again MCI Worldcom objects to the Commission granting any relief from the requirements of Section 251(b)(3) of the Act. Once again, it appears that these Regional Bell Operating Companies (BOCs) summarized a discussion or meeting that took place with Commission staff. Yet, neither letter provides a summary of these meetings, who was in attendance and what was discussed. Not only may there be a possible violation of the Commission's own ex parte rules, but all three carriers fail, just like SBC, to demonstrate "good cause" for a waiver of the Commission rules.<sup>3</sup> Not one of these three BOC provides "special circumstances" that warrant Commission consideration. In addition, these BOCs fail to justify the Commission's authority to waive the requirements of the Act.

The requests from Bell Atlantic are a transparent attempt to skirt its obligation to comply with Section 251(b)(3) of the Act. For instance, Bell Atlantic<sup>4</sup> already provides intrastate intraLATA toll dialing parity in eight of its eleven states (Delaware, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and West Virginia) and has been order to provide intrastate intraLATA dialing parity in Massachusetts on February 8, 1999. The Maryland and Virginia Commissions are still considering orders to implement intrastate intraLATA dialing parity.<sup>5</sup> AT&T has already filed in Federal District Court in Virginia against Bell Atlantic. AT&T claims and correctly so, that Bell Atlantic is in violation of Section 251(b)(3) of the Act. Should the Commission grant this so-called relief, competition in one of the nation's largest interstate intraLATA toll dialing parity markets, the Maryland-Virginia suburbs, will be put on hold. This is quite contrary to the Commission's own goals to open markets across this country.<sup>6</sup>

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<sup>2</sup> See, Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Cynthia Cox, Executive Director, Federal and State Relations, BellSouth, dated December 30, 1998.

<sup>3</sup> These BOCs must demonstrate that there is "good cause" for a waiver of Commission rules. 47 C.F.R. 1.3. In making such a demonstration, these carriers face a "high hurdle" and must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, Order, CC Docket No. 96-98, DA 97-675, rel. Apr. 4, 1997, at ¶ 14, citing *WALT Radio v. FCC*, 418 F.2d 1153, 1157, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972); See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> Bell Atlantic provide service in portion of CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT and WV.

<sup>5</sup> IntraLATA toll dialing parity does not apply to the District of Columbia.

<sup>6</sup> "This decision confirms the logic of the Telcom Act: that competition breeds competition. The companies should stop litigating and give Americans what they want, choice." See, Statement Of FCC Chairman William E. Kennard On Supreme Court's Denial Of Cert In Fifth Circuit Bill Of Attainder Case, January 19, 1999.

Similarly, BellSouth has already implemented intrastate intraLATA dialing parity in Florida, Georgia and Kentucky and is ordered to provide dialing parity by February 1999 in Louisiana, Mississippi and North Carolina. Leaving only two states in BellSouth's nine-state territory where the State Commissions are still considering petitions filed by the interested parties (Tennessee and South Carolina). Therefore, BellSouth's proposal would, technically only apply to Tennessee and South Carolina. BellSouth's so-called compromise does nothing to advance open toll markets in their region since BellSouth also claimed in its letter that it would not "waive its right" to continue to advocate that it does not have to provide intraLATA toll dialing parity. BellSouth is basically saying that it will not agree to the arbitrary date of March 31, 2000 for Tennessee and South Carolina. Instead, BellSouth will use a Commission decision in their favor to assist in their state advocacy. The Commission simply cannot let this happen. Instead, the Commission should determine and clearly state that BellSouth, along with SBC, Bell Atlantic and USWest must implement interstate intraLATA toll dialing parity in their entire regions, not only in the states where they've already implemented intrastate intraLATA toll dialing parity. This is what the Act and existing Commission rules require.

Lastly, USWest already provides intrastate intraLATA dialing parity in five of its fourteen states: Arizona, Minnesota, New Mexico, Utah and Wyoming ; while the PUCs in eight of USWest's remaining states (Colorado, Iowa, Montana, North Dakota, Nebraska, Oregon and Washington) have ordered USWest to provide intrastate intraLATA dialing parity.<sup>7</sup> In Idaho, USWest has been ordered to file an implementation plan by June 1, 1999. What possible reason could USWest have to request this relief from the Commission when all the states in its territory have required USWest to provide intrastate intraLATA dialing parity? Its obvious that USWest seeks to use the Commission as a pawn to influence the State Commission decisions in North Dakota, and Idaho regarding implementation dates.<sup>8</sup>

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<sup>7</sup> All but North Dakota have ordered USWest to begin offering intrastate intraLATA dialing parity by February 8, 1999. North Dakotans will be given a choice in July 1999. Lastly, South Dakota state telecommunications law does not allow the state PUC to order USW to provide intrastate intraLATA until USW is authorized to provide intrastate interLATA dialing parity.


<sup>8</sup> Both North Dakota and Idaho have interstate intraLATA toll areas. North Dakota interstate intraLATA areas extend in to Minnesota, Montana and South Dakota. Idaho interstate intraLATA toll areas extend into Washington, Montana, Oregon and Nevada.

The Commission cannot support the arbitrary dates proposed by these BOCs. Not only do SBC, BellSouth, Bell Atlantic and USWest fail to demonstrate good cause as to why this relief is in the public interest, but granting these requests is in direct conflict with the Commission's own goals to achieve open and competitive toll markets.

MCIWorldcom respectively request the Commission consider these facts in its determination in this proceeding.

Sincerely,

Sincerely,



Mary DeLuca

Mary De Luca  
Senior Policy Advisor, Federal Regulatory Affairs  
MCI Worldcom, Inc.

cc: **Yog Varma, Deputy Chief, CCB**  
**Kurt Schroeder**  
**Gregory Cook**  
**Robin Smolen**

**Status of Intrastate IntraLATA Toll Dialing Parity Implementation.**

State	Major LEC(s) Conveyed	Total State IntraLATA BOC Eligible	BOC Conveyed/Status
AL	GTE	13%	BOC Ordered to Implement; date to be determined
AR	GTE	18%	Open Proceeding
AZ	US West/GTE	97%	IMPLEMENTED PRIOR TO ACT
CA	GTE	23%	Open Proceeding;
CO		0%	BOC ordered to implement 2/99
CT	SNET	98%	N/A
DC	No intraLATA Toll	0%	N/A
DE	Bell Atlantic	100%	IMPLEMENTED PRIOR TO ACT
FL	Bell South	98%	IMPLEMENTED PRIOR TO ACT
GA	Bell South	93%	IMPLEMENTED PRIOR TO ACT
HI	GTE	100%	N/A
IA	Small LECs	38%	BOC ordered to implement 2/99
ID	GTE	19%	BOC Ordered to implement; must file plan by 6/1/99
IL	AIT/GTE	98%	IMPLEMENTED PRIOR TO ACT
IN	GTE	37%	BOC ordered to implement 2/99
KS	GTE/Sprint	14%	BOC ordered to implement 2/99
KY	Bell South	89%	IMPLEMENTED PRIOR TO ACT
LA		0%	BOC ordered to implement 2/99
MA		0%	BOC Ordered to implement 4/20/99
MD		0%	Open Proceeding
ME	Bell Atlantic	84%	IMPLEMENTED PRIOR TO ACT
MI	AIT(70%)/GTE	72%	IMPLEMENTED PRIOR TO ACT
MN	US West/GTE	83%	IMPLEMENTED PRIOR TO ACT
MO	GTE	14%	MCI filed petition, no hearing scheduled
MS		0%	BOC ordered to implement 2/99
MT		0%	BOC ordered to implement 2/99
NC	GTE/Sprint	38%	BOC Order to implement 2/99
ND	Small LECs	0%	BOC ordered to implement 7/1/99
NE	GTE	9%	BOC ordered to implement 2/99
NH	Bell Atlantic	94%	IMPLEMENTED PRIOR TO ACT
NJ	Bell Atlantic	100%	IMPLEMENTED PRIOR TO ACT
NM	US West	95%	IMPLEMENTED PRIOR TO ACT
NV	Sprint	67%	Opening Proceeding
NY	Bell Atlantic	94%	IMPLEMENTED PRIOR TO ACT
OH	GTE/Cinn Bell	35%	BOC ordered to implement 2/99
OK	GTE	7%	Open Proceeding; hearing set for Jan99
OR	GTE	27%	BOC Ordered to implement 2/99
PA	Bell Atlantic	92%	IMPLEMENTED PRIOR TO ACT
RI	Bell Atlantic	100%	IMPLEMENTED PRIOR TO ACT
SC	GTE	15%	Open Proceeding
SD	Small LECs	0%	BOC ordered to implement 2/99
TN	Sprint	11%	Open Proceeding
TX	GTE/Sprint	21%	BOC ordered to implement 2/99
UT	US West	94%	IMPLEMENTED PRIOR TO ACT
VA	GTE	25%	Petition pending; AT&T filed in District Court against BA
VT	Bell Atlantic	84%	IMPLEMENTED PRIOR TO ACT
WA	GTE	26%	BOC ordered to implement 2/99
WI	AIT/GTE	80%	IMPLEMENTED PRIOR TO ACT
WV	Bell Atlantic	96%	IMPLEMENTED PRIOR TO ACT
WY	US West	86%	IMPLEMENTED PRIOR TO ACT

## **SUMMARY OF STATE ACTIVITY**

**52% Nation's Households are 2-PIC Eligible**

**67% Nation's Households will be 2-PUC Eligible after all orders take effect.**

**20 States- BOC offering 2 PIC via Order prior to Act or is single LATA state**

**13 States have ordered BOC to provide 2 PIC (11 by 2/99; 1 by 7/99; 1 by 4/99)**

**9 States are reviewing whether to order BOC to provide 2 PIC**

**4 states- intraLATA toll does not apply (DC, HI, Alaska, CT)**

**3 states have state law conflict (TX, KS and SD)**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. P-100, SUB 72**

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

In the Matter of  
Investigation to Consider Whether Competitive )  
Intrastate Offerings of Long Distance Telephone ) **ORDER TO IMPLEMENT**  
Service Should be Allowed in North Carolina and ) **INTRALATA TOLL**  
What Rules and Regulations Should be Applicable to ) **DIALING PARITY**  
Such Competition if Authorized )

**BY THE COMMISSION:** On October 1, 1998, AT&T Communications of the Southern States, Inc. (AT&T), made a filing in opposition to the proposed amendment filed by BellSouth Telecommunications, Inc. (BellSouth), with respect to its IntraLATA toll dialing parity and implementation plan. AT&T called upon BellSouth to implement IntraLATA presubscription in general by February 8, 1999, regardless of whether BellSouth has been granted authority to enter the in-region long distance market.

IntraLATA toll dialing parity refers to the ability of an end-user to designate, or presubscribe to, a preferred telecommunications carrier so that thereafter an IntraLATA toll call will route automatically to the preferred carrier without an access code. In practical terms it would allow a customer to make an IntraLATA toll call via his preferred carrier by dialing 1 plus the telephone number. Currently, IntraLATA competition is permitted in North Carolina, but in BellSouth's territory the customer must dial a 101XXXX access code plus the telephone number in order to utilize a carrier other than BellSouth.

AT&T by way of background, stated that BellSouth had filed revisions to its tariffs on August 10, 1998, proposing intrastate IntraLATA toll dialing parity in the Wilmington and Charlotte LATAs effective February 8, 1999. AT&T went on to argue that the Telecommunications Act of 1996 (TA96) requires BellSouth to establish IntraLATA toll dialing parity by February 8, 1999. AT&T further argued that the Commission has already found IntraLATA presubscription to be in the public interest, but that its benefits are unrealized in BellSouth's service territory. It further noted that IntraLATA presubscription exists in other local exchange territories in North Carolina, notably those of GTE South, Inc. (GTE) and Carolina Telephone and Telegraph Company (Carolina Telephone) and Central Telephone Company (Central Telephone) and that BellSouth has implemented IntraLATA presubscription in other states in the Southeast, including Georgia, Florida, Kentucky, and Mississippi. AT&T maintained that provision of IntraLATA presubscription by February 8, 1999, is not burdensome, since BellSouth already has the technical capability in its switches.



In its legal argument AT&T relied on certain provisions of TAPB. In Section 251(b)(3), among the obligations of all local exchange carriers, there is the duty "to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays." Section 271(e)(2) specifically addresses Bell operating companies (BOCs). It states in Section 271(e)(2)(A) that a BOC must provide intraLATA toll dialing parity "coincident with its exercise of that [in-region interLATA] authority." But Section 271(e)(2)(B) goes on to say:

Except for single-LATA States and States that have issued an order by December 10, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of the enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

AT&T noted that the Federal Communications Commission (FCC) had required BOCs to implement intraLATA toll dialing parity by February 8, 1999, but that the United States Court of Appeals for the Eighth Circuit had vacated the FCC's dialing parity rules as they apply to intraLATA telecommunications in State of California v. FCC, 124 F.3d 934, 943 (8th Cir. 1997) (California), reasoning that the FCC lacked jurisdiction over intrastate telecommunications matters. This ruling vested in the states the responsibility to enforce the provisions of TAPB relating to intrastate service.

Sprint Communications Company LP (Sprint), on October 8, 1998, filed Comments in Support of AT&T's filing in this matter. Sprint's accompanying Motion to Intervene was unnecessary since Sprint is already a party to Docket No. P-100, Sub 72. Sprint maintained that it was plain that BellSouth has an obligation to provide intraLATA toll dialing parity under TAPB and that, in fact, there is nothing to prevent the Commission from issuing such an Order, so long as it becomes effective on or after February 8, 1999. Furthermore, the California case stands for the proposition that the jurisdiction for imposition of intraLATA dialing parity rests with states. Such dialing parity is clearly in the public interest, especially inasmuch as approximately 98% of all intraLATA calls are intrastate in nature.

WorldCom Technologies, Inc. and MCI Telecommunications Corporation (collectively, MCI) echoed many of the views of AT&T and emphatically denied that there should be any linkage between BellSouth's entry into the interLATA long-distance market

and intraLATA presubscription. The issue is no longer "whether" but "when." MCI argued that intraLATA toll dialing parity has benefited consumers throughout the BellSouth region. MCI also maintained that the Commission should ensure that BellSouth does not discriminate against its competitors when intraLATA toll dialing parity is ordered. For example, customers should be notified of their right to select alternative carriers prior to as well as following the implementation of toll dialing parity.

Telecommunications Reseller's Association (TRA), a national industry organization representing more than 650 telecommunications service providers, supported toll dialing parity by February 8, 1999, as a means of fostering competition and of complying with TA96.

BellSouth, by way of background, stated that its original "intraLATA Toll Dialing Parity Implementation Plan" (Plan) was filed with the Commission on April 10, 1997, and approved on May 27, 1997. The Plan, which was supported by the Public Staff, stated that BellSouth would provide intraLATA toll dialing parity "when BellSouth is authorized by appropriate State and Federal authorities to provide InterLATA service in North Carolina." The Plan also approved BellSouth's proposed recovery of its costs through a charge on all intrastate originating and terminating access minutes, including intraLATA toll traffic carried over BellSouth's facilities. On August 10, 1998, BellSouth proposed an amendment to the Plan to provide for interstate/intraLATA toll dialing parity in the Wilmington and Charlotte LATAs effective February 8, 1999, in order to comply with relevant FCC rules. In California the Eighth Circuit had stated that its decision to vacate the FCC's dialing parity rules "does not apply to the extent that the Commission's rules govern the very small percentage of intraLATA, toll, interstate telecommunications." (Emphasis in original).

Addressing AT&T's filing, BellSouth maintained that AT&T had misstated the law--contrary to AT&T's view, there is no legal requirement at this time that full intraLATA 1+ presubscription be implemented by February 8, 1999. There is no such requirement in the text of TA96, and the relevant FCC rules that would mandate this result have been vacated. BellSouth argued further that the current dialing requirements do not substantially inhibit competition and that, while companies like Carolina Telephone, Central Telephone, and GTE which have adopted intraLATA toll dialing parity can carry interLATA long distance traffic, BellSouth cannot. Hence, BellSouth would be at a competitive disadvantage. Experience in Georgia and Florida indicates that BellSouth would suffer massive losses in access lines if intraLATA toll dialing parity were approved prior to BellSouth being able to enter into the interLATA market, because AT&T and other interexchange carriers would have a head start in packaging interLATA and intraLATA long distance services. As for other states that have mandated implementation of intraLATA toll dialing parity, BellSouth argued that they were not similarly situated to North Carolina.

Lastly, BellSouth stated that it does not dispute that it can technically implement intraLATA presubscription by February 8, 1998, but it strenuously objected to being required to do so because it would be placed at a grossly unfair competitive disadvantage.

#### Comments

On October 19, 1995, the Commission issued an Order Seeking Comments on BellSouth Dialing Parity. The Order stated that the sole issue to be addressed is whether this Commission should require BellSouth to provide intrastate intraLATA toll dialing parity by February 8, 1998, and, if not, by what date or under what circumstances. A relevant ancillary issue is how intrastate intraLATA toll dialing parity, if ..... is to be implemented. However, the Commission stated that the issue of cost recovery for intraLATA toll dialing parity is considered to have been settled by the Commission's May 27, 1987 decision, and comments or reply comments would not be received on this issue.

The Commission allowed parties that had not already commented on BellSouth's proposal to do so. Initial and reply comments were filed as follows:

Attorney General argued that while the weight of authority supports the conclusion that Section 271 does not mandate that the Commission require BellSouth to implement intraLATA dialing parity, nevertheless intraLATA dialing parity is in the public interest and should be implemented.

ICG Telecom maintained that the Commission has the authority to order intraLATA presubscription now and that presubscription will both benefit consumers and promote local exchange competition.

Southeastern Competitive Carriers Association (SECCA) argued that the Commission has the requisite authority to require intraLATA dialing parity and that this would be beneficial to consumers. SECCA denied that mandating dialing parity would be unfair to BellSouth, because BellSouth is already extremely well positioned to compete for local toll customers regardless of its status in the interLATA market. By leveling the intraLATA playing field, intraLATA competition will tend to lead to lower intraLATA toll rates.

Time Warner Telecom of North Carolina, L.P. (Time Warner) argued that the Commission's authority to require intraLATA toll dialing parity is clear and that it should be implemented.

#### Reply Comments

Sprint stated that it agreed with the Attorney General's comments that intraLATA dialing parity is in the public interest, but disagreed with the Attorney General's view that,

legally, Section 271 does not mandate that BellSouth implement dialing parity. Sprint pointed out that Section 251(b)(3) requires all local exchange companies to provide toll dialing parity, while Section 271(e)(2)(B) simply provides a grace period for BOCs for such implementation until February 8, 1999. Read as a whole, these sections require BOCs to implement toll dialing parity by February 8, 1999, regardless of whether they can compete in the long distance market.

IBA argued that the Commission clearly has authority to institute IntraLATA toll dialing parity by February 8, 1999, although TRA concedes that state commissions are not necessarily mandated to do so by that date. TRA further argued that instituting dialing parity is in the public interest and that BellSouth's argument that it would be competitively disadvantaged is specious. The consumer would be clearly benefited by requiring IntraLATA toll dialing parity as soon as practicable.

Public Staff took a somewhat different perspective from the other parties in its recommendations. Legally, the Public Staff said, the Commission has the flexibility to order IntraLATA toll dialing parity as of February 8, 1999, or some other date after that. The pertinent question is what the Commission should do. While acknowledging that toll dialing parity is beneficial to consumers, the Public Staff also believed that "[i]t seems unfair to give BellSouth's competitors the ability to package interLATA and IntraLATA toll services before BellSouth can compete on the same basis." The Public Staff was also uncertain that there would not be a negative impact on local rates. Accordingly, the Public Staff proposed that the Commission order BellSouth to implement IntraLATA toll dialing parity on January 15, 2000, or when BellSouth receives interLATA authority, whichever is earlier, provided that BellSouth amends its Plan, effective February 8, 1999, to provide IntraLATA toll and expanded local calling rate reductions to the levels that are approximately equivalent to those presently being enjoyed by BellSouth customers in other states where IntraLATA toll dialing parity has been implemented. Furthermore, the Commission should not approve any such rate reductions until it receives complete and unconditional assurances from BellSouth that it will not attempt to recover any resulting revenue losses under its pricing regulation plan, either through rate rebalancing within the various service categories or through the governmental action provision. If BellSouth has not filed and received approval of such amendments and rate reductions by February 8, 1999, the Commission should order BellSouth to implement IntraLATA toll dialing parity forthwith.

As for BellSouth's proposal regarding interstate, IntraLATA dialing parity, the Public Staff recommended that this be implemented concurrently with IntraLATA toll dialing parity to avoid customer confusion.

BellSouth reiterated its arguments that the Commission has the flexibility to delay implementation of toll dialing parity beyond February 8, 1999, and that it would be grossly

unfair to require BellSouth to do so when its competitors enjoy substantial advantages in the packaging of services, while BellSouth lacks interLATA authority.

AT&T repeated its view that federal law requires BellSouth to implement intraLATA presubscription by February 8, 1999, and that such an action would be beneficial to the using and consuming public. AT&T also made a number of recommendations concerning the ancillary issue as to how intraLATA dialing parity should be implemented.

MOI and SECCA, filing jointly, argued that public policy, public interest, and TAA6 all require that intraLATA toll dialing parity be implemented by February 8, 1999. Furthermore, as of February 8, 1999, any "linkage" between in-region interLATA authority and implementation of intraLATA toll dialing parity ceases to exist. MCI and SECCA noted that a number of states have ordered BOCs to implement intraLATA toll dialing parity, including Georgia, Florida, Kentucky, Louisiana, Mississippi, Washington, and Oregon.

#### Comments on Public Staff Proposal

On December 1, 1998, the Commission issued an Order seeking comments on the Public Staff's proposal set forth in its Reply Comments.

AT&T emphasized its belief that BellSouth has a legally binding obligation to provide intraLATA toll dialing parity by February 8, 1999, and that swift implementation of toll dialing parity will benefit end-users significantly. AT&T also argued that the Commission lacks legal authority to delay implementation of interstate intraLATA presubscription, since the FCC rules on this subject remain legally valid.

BellSouth stated that it disagreed with the Public Staff's proposal and urged the Commission to implement intrastate toll dialing parity on the date BellSouth enters the interLATA market. While gratified with the Public Staff position that intraLATA toll dialing parity is not legally required as of February 8, 1999, as well as the Public Staff's view that implementing dialing parity prior to BellSouth's entrance into the interLATA long distance market would work unfairness, BellSouth nevertheless emphasized its view that interLATA long distance authority should come before toll dialing parity. Moreover, BellSouth observed that North Carolina end-users enjoy the benefits of the defined-radius and defined-area plans and can utilize alternative carriers through dialing around--a practice which interexchange carriers vigorously promote in other contexts.

Sprint insisted that BellSouth is legally bound to implement intraLATA toll dialing parity on February 8, 1999 and that the rate reduction proposal of the Public Staff is no substitute for competition. IntraLATA toll dialing competition has brought down rates in other states, such as Florida.

IRA argued that the Public Staff's proposal would lengthen BellSouth's dominance over the intraLATA toll market and would not be beneficial to end-users.

SECCA and MCI, commenting jointly, maintained that the Public Staff's proposed implementation date of January 15, 2000, is arbitrary and without the support of law or policy and that competition, not continued regulation, will most benefit end-users. The Commission should also proceed with implementation of the interstate aspect of intraLATA toll dialing parity.

Concord Telephone Company (Concord), while taking no position on the substantive matter in this docket, expressed concern regarding the Public Staff's proposal. Concord argued that the Public Staff's proposal was neither logically nor legally related to the issue in this docket and was seeking to "retrade complex revenue and pricing issues" already approved in Docket No. P-55, Sub 1013, thereby reducing BellSouth's pricing flexibility. Moreover, the current status of this proceeding does not provide an adequate basis upon which to approve the Public Staff proposal.

Public Staff replied that it was its proposal that, if BellSouth did not accept the conditions that the Public Staff set out, BellSouth should implement intraLATA toll dialing parity immediately. The Public Staff stated that it did not believe that the Commission could impose those conditions under the Price Plan without BellSouth's consent but that it could order BellSouth to implement intraLATA toll dialing parity effectively February 8, 1999, or as soon thereafter as possible. The Public Staff argued that public policy considerations, on balance, favor such action.

**WHEREUPON the Commission reaches the following**

**CONCLUSIONS**

There are two main questions in this matter. The first is whether BellSouth is required by law to provide intraLATA toll dialing parity by February 8, 1999. The second is, assuming the February 8th date is not required, when the appropriate date is. An ancillary issue is the date on which implementation of interstate intraLATA toll dialing parity should be required.

There are several distinct views on the above matters. Those aligned with AT&T insist that BellSouth is legally required to provide intraLATA toll dialing parity by February 8, 1999. BellSouth and the Public Staff take the view that the implementation of intraLATA toll dialing parity by February 8, 1999, is not legally required. BellSouth argues that the date of toll dialing parity should be connected with its receiving authority to provide interLATA long distance service. The Public Staff has initially suggested approximately a year's delay, coupled with BellSouth's agreeing to reduce intraLATA toll rates.

It is the Commission's view that it possesses flexibility in setting the date by which BellSouth must provide intraLATA toll dialing parity. Section 251(b)(3) of TAA imposes a duty on all local exchange companies to provide dialing parity to competing providers, but does not specify a timetable for doing so. Section 271(e)(2) specifically addresses intraLATA toll dialing parity by BOCs, but it is the Commission's judgment that the plain language of this section only acts to preclude a state commission, with certain exceptions, from requiring a BOC to implement intraLATA toll dialing parity before February 8, 1999. After that date there is no connection between whether a BOC has received authority to provide in-region interLATA long distance service and whether intraLATA toll dialing parity can be imposed. The FCC sought to impose rules that would have required BOCs to implement such dialing parity by February 8, 1999, but these rules were struck down in California. This ruling simply had the effect of vesting in the states the sound discretion as to when, on or after February 8, 1999, a BOC should be required to implement intraLATA toll dialing parity.

Assuming, then, that the Commission possesses discretion as to the date on which it can require intraLATA toll dialing parity, the next question is: when?

At this point, the Public Staff recommendation that intraLATA toll dialing parity be delayed until January 15, 2000, if BellSouth agrees to reduce intraLATA toll rates, does not appear any longer to be an option. BellSouth is not agreeable to reducing its intraLATA toll rates, and the Public Staff accurately observes that the Commission cannot unilaterally force BellSouth to do so. Therefore, this proposal is "off the table."

Accordingly, it is the Commission's conclusion that BellSouth be required to provide intraLATA toll dialing parity (including the interstate component) by February 8, 1999, in accordance with the provisions of its Plan.

The argument in favor of requiring BellSouth to implement intraLATA toll dialing parity by February 8, 1999, is that doing so is clearly in the public interest in that it would foster competition and level the playing field with respect to the provision of intraLATA toll traffic. The present system in which BellSouth can carry intraLATA toll traffic when its customers simply dial 1+, while competitors are relegated to offering the same service through 101XXXX, clearly puts the competitors at a relative disadvantage and inconveniences their customers. Abolition of this anomaly is certainly in the public interest and is in accordance with the pro-competitive policies enunciated in TAA8 and House Bill 161.

While conceding that it can technically provide toll dialing parity by February 8, 1999, BellSouth wants to tie the imposition of dialing parity to its receiving authority to provide in-region interLATA long distance authority and complains that it would be otherwise competitively disadvantaged and would lose customers. As noted above, there is no necessary legal connection between the two after February 8, 1999. To do so would amount to postponing intraLATA toll dialing parity by BellSouth indefinitely. This would be unacceptable. The Commission and all the parties to this docket are abundantly acquainted with the Section 271 process and how it "grinds slow and exceedingly fine"—so slowly and so finely that no BOC has yet been granted authority to provide interLATA long distance service by the FCC. Mandating intraLATA toll dialing parity by BellSouth will put BellSouth and its competitors on an even footing regarding dialing arrangements. The fact that BellSouth lacks the authority to package its services with the degree of flexibility that its competitors have is an artifact of telecommunications history over which this Commission has no dispositive control. It is unfair to deprive North Carolina customers of the benefits of intraLATA dialing parity contingent upon an event which may or may not happen in the foreseeable future.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth implement intraLATA toll dialing parity by no later than February 8, 1999, in accordance with the provision of its Plan.
2. That the tariff revisions regarding interstate intraLATA toll dialing parity, filed August 10, 1998, be approved, with implementation by no later than February 8, 1999.
3. That all certified interexchange carriers be hereby authorized to offer intraLATA presubscription (1+, 0+, and 1+NXX+555-1212 calling) to BellSouth customers in North Carolina effective February 8, 1999.



4. That BellSouth shall provide a Public Notice to be mailed to all its customers informing them of their ability to choose intraLATA carriers and of the process for such selection. BellSouth shall consult with the Public Staff on both the Public Notice and the script for informing customers subscribing to local exchange service.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of January, 1999.

NORTH CAROLINA UTILITIES COMMISSION

*Geneva S. Thigpen*

Geneva S. Thigpen, Chief Clerk

msD10489.04

Commissioners William Pittman and Richard Corder dissented.



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January 8, 1999

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## **Settlement Agreement Proposes \$420 Million in Benefits to U S WEST Customers Over Five Years**

*—U S WEST Regulatory Director Submits Final Testimony in Support of Rate Reduction Plan—*

**DENVER** - U S WEST Director of Regulatory Affairs, Paul McDaniel, today submitted final testimony as part of the Colorado Public Utilities Commission consideration of rate reduction for customers over the next year. Under the proposed plan, in addition to rate reductions for some services customers will also avoid a number of rate increases if the unprecedented agreement that was announced in October is approved by the Colorado Public Utilities Commission (PUC).

U S WEST's agreement to tap its own revenues to reduce certain rates and to cover costs that would have resulted in local service rate increases, amounts to an \$84 million annual benefit to customers, or \$420 million over five years. The agreement also includes a service quality assurance plan that requires the company to meet certain service standards or return up to \$15 million annually in customer bill credits. U S WEST, the staff of the PUC, and the Office of Consumer Counsel worked out the agreement.

In addition to the rate concessions and service quality plan, the agreement provides U S WEST significant flexibility in setting its prices. Under the five-year price and service quality regulatory plan proposed in the agreement, U S WEST, like its competitors, will be able to adjust prices more quickly to meet competition in its local and in-state long-distance markets.

The settlement agreement includes the following provisions:

- Residential and business basic telephone service rates will be capped at current levels for the duration of the five-year plan.
- No increase in rates for the expansion of the 303/720 local calling area that went into effect December 31, 1998. U S WEST metro Denver and central Front Range customers will be able to call within the 303/720 area code toll-free due to a Commission order consolidating rate centers and expanding local calling. U S WEST had requested recovery of \$12 million in costs to implement rate center consolidation. This would have resulted in an increase in monthly residential basic local rates of 44 cents and in business basic local rates of \$1.11.
- If the Commission orders expansion of local calling areas (rate center consolidation) in the 970 and 719 area codes, U S WEST agrees to forego \$8 million in implementation costs. Toll rates were reduced on January 2.
- Price reductions of \$12 million for in-state long-distance calls carried by U S WEST went into effect January 1.
- A bill credit of \$22 million to residential and business basic local phone rates to off-set the anticipated 4.23 percent charge on in-state telecommunications services to pay for Colorado's

universal service fund. The fund ensures that basic telephone service is affordable in high-cost areas. This increase in telephone bills is scheduled to begin July 1, 1999.

- U S WEST will invest \$40 million to improve telecommunications services in Colorado without increasing rates.
- Reductions of \$12 million in rates that U S WEST charges long-distance companies to use its local telephone network. It is expected that the long-distance companies will pass these savings on to their customers.
- No increase in rates to pay for up to \$8 million of the cost to implement local number portability a new technology allowing customers to keep their phone number when changing to another local phone company.
- Service quality standards with significant financial incentives to ensure improved service to U S WEST customers in Colorado.

As part of the agreement, U S WEST will be able to reduce prices 14 days after notifying the PUC. The company must now wait 30 days before reducing prices. This change will enable U S WEST to respond more quickly to the needs of its customers.

The settlement agreement signed by U S WEST, the PUC staff and the OCC was filed with the Commission on October 29, 1998. Other parties will also have an opportunity to comment on the agreement to the Commission during the upcoming proceedings on the settlement. The Commission has set a hearing date on the Agreement for January 14-15. U S WEST (NYSE: USW) provides a full range of telecommunications services - including wireline and wireless PCS, data networking, directory and information services - to more than 25 million customers nationally in 14 western and Midwestern states. More information about U S WEST can be found on the Internet at <http://www.uswest.com>.

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## **U S WEST Asks Long-Distance Companies to Take Steps to Protect Consumers from New Slamming Problem With In-State Long-Distance Calls**

*—60 Percent of Customers Report They've Been Slammed on In-State Long-Distance Telephone Service—*

**DENVER** - Slamming, which has long been customers' number one complaint related to telephone service, is getting worse as local long-distance markets open to competition. Customers say they're being "slammed" in unprecedented numbers in five states that have given telephone customers the opportunity to choose the company that handles their in-state long-distance calls, U S WEST reported today.

"More than 60 percent of the customers whose in-state long-distance service has been switched to another company have told us the change was made without their knowledge or permission," said Mark Roellig, executive vice president-Public Policy, Human Resources and Law. "That's 10 times the slamming rate we've seen for customers' selection of an interstate long-distance company. It's unfortunate for customers that companies are using the opening of in-state long-distance markets as an opportunity to steal business rather than compete fairly."

In 1997, U S WEST helped nearly 400,000 customers who reported being slammed. That translates to about five percent of all the switches in long-distance service submitted by long-distance companies to be processed by U S WEST. "A slamming rate of five percent has been a nightmare for customers," Roellig said. "Increasing it to 60 percent cannot be tolerated."

With five more states served by U S WEST soon to allow customers to choose their in-state long-distance company, U S WEST today asked long-distance companies to verify they're legal safeguards designed to protect consumers and businesses from slamming.

"With such an enormous percentage of the customers expressing surprise and disclaiming any knowledge of the change in their LPIC (in-state long-distance company), we see very real and significant problems," Roellig said in his letter to the long-distance companies.

Roellig said he believes the problem stems from long-distance companies failing to make clear to customers that they now have two choices to make concerning their long-distance service. They can choose a company to handle their nationwide long-distance calls and a company to handle in-state calls within calling areas known as LATAs. Historically, U S WEST has handled most in-state long-distance calls.

If customers are confused and haven't been provided with adequate information to make a decision about their in-state long-distance carrier, "state laws that prohibit consumer fraud, including the suppression or omission of material facts, and both federal and state laws that forbid deceptive and unfair trade practices and conduct are implicated," Roellig said in his

letter.

The five states that already allow telephone customers to choose their in-state long-distance company are Arizona, Minnesota, New Mexico, Utah and Wyoming. Customers in six more states served by U S WEST - Colorado, Iowa, Montana, Nebraska, Oregon and Washington - will be able to choose their in-state long-distance company beginning in February.

"As the new rules take effect in those six states, customers can expect to be bombarded with telemarketing calls from long-distance companies wanting them to switch from U S WEST," Roellig said. "We want to make sure they know what they're being asked to do - and to know that U S WEST still offers in-state long-distance service."

In fact, Roellig noted, U S WEST has recently lowered its in-state long-distance prices in many areas to make them even more competitive - as low as nine cents a minute in most states.

U S WEST (NYSE:USW) provides a full range of telecommunications services - including wireline, wireless PCS, data networking, directory and information services - to more than 25 million customers nationally and in 14 western and midwestern states. More information about U S WEST can be found on the Internet at <http://www.uswest.com>.

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